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Central Intelligence Agency

Washington D.C. 20505

The Honorable James C. Wright
Speaker of the House of Representatives
Washington, DC 20515

29 FEB 1988

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. §552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1987.

This year we continued our record of achievements notwithstanding a notable increase in requests received and the demands imposed by other legislative and executive requirements. In particular, a key element in our present as well as future progress was the merger of our FOIA and classification review staffs into one unit, responsible to one manager, which has served to centralize and expedite the processing of all categories of requests. The results of this merger and our commitment to efficient processing of information requests is demonstrated by our present median response time of 1.49 months which compares very favorably with the 3.24 months reported for 1986, and which is a considerable improvement over the 9.2 months reported in October 1985, when this calculation was first made. The results of our efforts to complete the older cases have also been gratifying; only 125 of the cases received before 1986 remain in process. All 1975, 1976, and 1977 cases have been completed, and only two 1978 and six 1979 cases remain open. These are massive, but we hope to complete them in 1988. In fact, to illustrate the currency of our processing, 74% of our 1987 workload was received during that year.

As noted, new requests increased more than 7% over 1986 (3324 compared with 3094 during the previous year). Of these 3324 cases, 1655 were FOIA requests, 1412 were "my file" requests under the Privacy Act, and 257 were mandatory review requests under Executive Order 12356. In addition to this increase, an additional requirement was the workload imposed on our records officers throughout the Agency by the four separate legal and congressional inquiries relating to the Iran/Contra matter. As would be expected, the primarily officers qualified to conduct these massive records searches and reviews were those individuals normally responsible for FOIA and Privacy Act matters. And, in many components, those same officers are responsible for the conduct or support of on-going intelligence activities. As a result, our workload increased by 279 cases notwithstanding the fact that we closed 3045 cases. A more detailed tabulation of our workload can be found in Tab A.

Processing of administrative appeals was influenced by the same two factors as were initial requests--increased numbers of new appeals and reduced manpower available to process them. There were 172 new appeals received in 1987; with the completion of 134, we ended the year with 204 open appeals as compared to 166 at the end of 1986. These figures include FOIA, PA, and mandatory review cases, like the initial processing figures cited earlier.

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During 1987 our manpower input to FOIA/PA/EO processing was 94 manyears -- a level somewhat below that of recent years for reasons discussed earlier in paragraph three. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1986. Since 1975 we estimate that the Agency has spent over $39.5 million in personnel costs alone for processing information requests -- $22.9 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency, since 1975, has collected only $107,723 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, the agency collected only $2,637 in fees during 1987--about half the amount collected in 1986.

During 1987 we continued to benefit from the effects of the CIA Information Act. First, we have been able to concentrate our efforts more productively on potentially releasable records to the benefit of the requesters. Second, and more importantly, the time formerly spent in searching for and processing sensitive operational files can now be devoted to other requests and to carrying out the Agency's primary missions. We are encouraged by the continued improvement in our processing procedures, which shows in our response time and the currency of our workload, and will make every effort to show further improvement during CY 1988.

Sincerely,

STAT

R. M. Huffstutler
Deputy Director
for
Administration

Enclosures

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Central Intelligence Agency

Washington D.C. 20505

29 FEB 1988

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

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FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1987

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 702

There were 594 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 594 have not been included in the 702 figure provided in answer to question No. 1 above. In 119 instances, our searches uncovered no records relevant to the request. In 4 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 120 instances in which the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 2 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 4 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Eight requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 337 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

Exemption involved	Number of times (i.e., requests) invoked
(b)(1)	628
(b)(2)	3
(b)(3)	613
(b)(4)	4
(b)(5)	22
(b)(6)	33
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., requests) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	613

(c) Other authority: None

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3. Appeal Determinations:

(a) Total number of administrative appeals from adverse initial decisions received in 1987 made pursuant to subsection (a)(6): 143

(b) Number of all appeals closed in 1987 in which, upon review, request for information was granted in full: None

(c) Number of all appeals closed in 1987 in which, upon review, request for information was denied in full: 60

(d) Number of all appeals closed in 1987 in which, upon review, request was denied in part: 15

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

Exemption invoked	Number of times (i.e., appeals) invoked
(b)(1)	70
(b)(2)	1
(b)(3)	71
(b)(4)	0
(b)(5)	4
(b)(6)	5
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., appeals) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	71

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5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

Name	Title	No. of instances of participation
Donnelly, William F.	Former Deputy Director for Administration	4
Kerr, Richard J.	Deputy Director for Intelligence	26
Hauver, Carroll L.	Former Inspector General	4
George, Clair E.	Former Deputy Director for Operations	52
Hineman, Richard E.	Deputy Director for Science and Technology	5
Doherty, David P.	Former General Counsel	1

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F), etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook [redacted] submitted with the 1983 report is still valid. See Tab B for new CFR regulations. STAT

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab C for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1987 was $2637.00.

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9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2) (A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 170,436 actual man-hours of labor was devoted during calendar year 1987 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 94 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees at GS-07/6. The funds expended during calendar year 1987 on personnel salaries, if overtime payments are ignored, would thus amount to $3.2 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to $3.5 million. Of this total, approximately $2.2 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 2

Both actions were brought under FOIA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: None

(d) Internal Memoranda: None

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Production/Workload Statistics

	FOIA	PA	EO*	TOTALS	%
Workload:					
Cases carried over from 1986	658	341	176	1175	(26.1)
Cases logged during 1987	1655	1412	257	3324	(73.9)
Totals	2313	1753	433	4499	
Actions taken:					
Granted in full	291	376	50	717	(23.5)
Granted in part	294	218	112	624	(20.5)
Denied in full	408	106	55	569	(18.7)
No records found	119	476	0	595	(19.5)
No CIA records found	4	8	0	12	(0.4)
Canceled	337	39	4	380	(12.5)
Withdrawn	8	4	0	12	(0.4)
Referred elsewhere	120	7	1	128	(4.2)
Early appeal	2	0	0	2	(0.1)
Early litigation	4	2	0	6	(0.2)
Totals:	1587	1236	222	3045	(100 0)
Cases carried over to 1988	726	517	211	1454	
Change in workload	+68	+176	+35	+279	(+23.7)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

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2. Paragraph (a) of § 351.5 is amended by the addition at the end thereof of two sentences. As revised paragraph (a) reads as follows:

§ 351.5 [Amended]

(a) *Payroll plans:* Bonds may be purchased through deductions from the pay of employees of organizations which maintain payroll savings plans. The bonds must be issued by an authorized issuing agent, whch may be the employer organization or a financial institution or Federal Reserve Bank or Branch servicing that organization. Effective February 1, 1988, bonds may be purchased only in denominations of $100 or higher, except that employees who on such date are purchasing $50 or $75 through payroll deductions will be permitted to continue the purchases. Although these employees may increase the amount of their payroll deductions, or change the inscriptions on their existing authorizations, no new authorizations for additional registrations in the $50 and $75 denominations may be made.

* * * * *

[FR Doc. 87-28051 Filed 12-7-87; 8:45 am]

BILLING CODE 4810-10-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Part 1900 of Title 32 CFR was last published in full text in the **Federal Register** on 12 January 1983 (Vol. 48, No. 8, p. 1293). Since then, there have been several substantive amendments and more recently, proposed amendments were published in the **Federal Register** of 18 May 1987 (Vol. 52, No. 95, p. 18579) affecting those portions of the regulation relating to fees as required by the Freedom of Information Reform Act (FOIRA) of 1986. For the benefit of the public, Part 1900 is being republished with all current amendments and revisions, including a number of error corrections and changes in phraseology as well as technical and/or administrative changes to clarify or more accurately reflect applicable procedures.

EFFECTIVE DATE: December 8, 1987.

ADDRESS: Lee Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, Telephone: (703) 351-2083.

SUPPLEMENTARY INFORMATION: The policies and procedures of the Central Intelligence Agency (CIA or Agency) for handling requests for CIA records under the Freedom of Information Act (FOIA) or Executive Order 12356 are published in 32 CFR Part 1900. This final rule, in part, hereby amends those portions of the regulation concerned with fees charged for records services in response to FOIA requests to be consistent with the provisions of the FOIRA and is issued subsequent to formal public notice and comment. During the comment period, written comments were received from a number of individual journalists and organizations. These comments, which were generally critical of the Office of Management and Budget (OMB) and Department of Justice (DOJ) guidelines on fee regulations under FOIRA, were considered by the Agency in adopting these regulations. For example, the definitions in the proposed regulations of "commercial use," "representative of the news media," "educational institution," and "freelance journalist" were argued to be too restrictive. In addition, the fee waiver guidelines were also argued to be too restrictive. The comments were duly considered in drafting the final rule published herein. To accomplish the purposes of the FOIRA it will be necessary to modify §§ 1900.3 (Definitions) and 1900.25 (Fees for records services). The amended fee schedule reflects recommended adjustments for agency-wide charges that are permitted by law and the remaining charges are based on the government-wide schedule. The increases in fee schedule charges more accurately reflect current, direct costs. In addition, the FOIRA specifies two basic requirements to qualify for a waiver or reduction of chargeable fees. This amendment also sets forth the factors which will be used in making such determinations.

This final rule also amends the remaining sections of Part 1900 by incorporating into the regulation a number of error corrections and changes in phraseology as well as a number of technical and/or administrative changes to clarify or reflect more accurately applicable procedures and practices. It has been determined that invitation of public comment on these changes to the Agency's implementing regulations prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of the Administrative Procedures Act, 5 U.S.C. 553. Interested persons, however, are invited to comment in writing on these changes. All written comments received will be considered in making subsequent amendments or revisions to these regulations. Written comments should be addressed to: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Lastly, it has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public. In addition, this rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 1900

Freedom of information.

Accordingly, 32 CFR Part 1900 in its entirety is revised and reads as follows:

PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

Sec.

General

1900.1 Purpose and authority.
1900.3 Definitions.
1900.5 Organization; requests and submittals.

Requesting Records

1900.11 Freedom of Information Act and Executive Order 12356 communications; requirements as to form.
1900.21 Identification of persons requesting information under the provisions of Executive Order 12356.
1900.23 Pre-request option: Estimates of charges.
1900.25 Fees for records services.

Processing Freedom of Information and Executive Order Communications

1900.31 Screening communications.
1900.33 Processing expressions of interest.
1900.35 Processing requests for records.

Actions on Requests

1900.41 Searching for requested records.
1900.43 Reviewing records.
1900.45 Expeditious action; extension of time.
1900.47 Allocation of manpower and resources; agreed extension of time.
1900.49 Notification and payment; furnishing records.

Appeals

1900.51 Appeals to CIA Information Review Committee.

Miscellaneous

1900.61 Access for historical research.

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1900.63 Suggestions and complaints.

Authority: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and E. O. 12356.

General

§ 1900.1 Purpose and authority.

The part is issued under the authority of and in order to implement: section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); the Freedom of Information Act, as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); and Executive Order 12356 (3 CFR Part 166 (1983). It prescribes procedures for:

(a) Requesting records pursuant to the Freedom of Information Act;

(b) Requesting the declassification of documents pursuant to Executive Order 12356;

(c) Filing an administrative appeal of a denial of a mandatory review request under Executive Order 12356 or an initial request under the Freedom of Information Act;

(d) The prompt and expeditious processing of such requests and appeals; and

(e) Requesting estimates and advice prior to actually requesting records, thus affording protection against unanticipated fees.

This part is also designed to assist Central Intelligence Agency management at all appropriate echelons to allocate resources to perform the functions, duties and responsibilities of the Central Intelligence Agency prescribed by and pursuant to law, including in particular those situations where it is deemed necessary to choose among conflicting requirements, duties and responsibilities.

§ 1900.3 Definitions.

For the purpose of this part, the following terms have the meanings indicated:

(a) "Agency" includes any executive department, military department or other establishment or entity included in the definition of agency in subsection 552(e) of Title 5 of the United States Code;

(b) "Coordinator" means the Central Intelligence Agency Information and Privacy Coordinator;

(c) "Expression of interest" means a written communication submitted by a potential requester pursuant to § 1900.33 to indicate an interest in requesting records;

(d) "Freedom of Information Act" means section 552 of Title 5 of the United States Code, as amended;

(e) "Executive Order" means Executive Order 12356 (3 CFR Part 166 (1983));

(f) "Potential requester" means a person, organization or other entity who submits an expression of interest in accordance with § 1900.33;

(g) "Records," with reference to records of the Central Intelligence Agency, includes all papers, maps, photographs, machine readable records, and other documentary materials regardless of physical form or characteristics made or received by the Central Intelligence Agency in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the Central Intelligence Agency as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Agency or because of the informational value of data contained therein. But the term does not include:

(1) Index, filing and museum documents made or acquired and preserved solely for reference, indexing, filing or exhibition purposes;

(2) Routing and transmittal sheets and notes and filing instructions and notes which do not also include information, comment or statement of substance or policy;

(3) Books, newspapers, magazines, and similar publications and clippings and excerpts from any such publications;

(4) Records not originated by the CIA and subject to the continued control of the originator (such records will be referred to the originator for a disposition pursuant to § 1900.43(c)).

(h) "Records of interest" means records which are responsive to expression of interest or of a request;

(i) "Work days" means calendar days other than Saturdays and Sundays and legal public holidays.

(j) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and reviewing in the case of commercial requesters) documents to respond to a FOIA request. Direct costs include, for example, the current salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(k) "Search" includes all time spent looking for material that is responsive to a request utilizing available indices and other finding aids. The term search is predicated on the concept of reasonable search as contrasted to research which is neither required nor authorized by the FOIA. Efforts will be made to ensure that search for material is done in the most efficient and least expensive manner so as to minimize costs for both the Agency and the requester. "Search" for the purpose of determining whether a document is responsive is distinguished from "review" where the objective is to determine whether any of the responsive material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(l) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by requesters.

(m) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (n) of this section) to determine whether any portion of any document located must be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to remove or obliterate any material which is exempt from disclosure and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n) "Commercial use" request refers to a request in which the disclosure sought is primarily in the commercial interest of the requester. It is a request from or on behalf of one who seeks information primarily for the use or purpose that furthers the commercial, trade, income or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester is properly included in this category, the Agency will consider and may draw reasonable inferences from the identity and activities of the requester as well as the use to which the requester will put the documents requested.

(o) "Educational institution" refers to a United States preschool, public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an

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institution of professional education and an institution of vocational education which operates a degree-granting, accredited program or programs of scholarly research in recognized fields of study. The criteria to be met to be included in this category, for the purposes of fee waivers, are not satisfied simply by showing that the request is for a library or other records repository. Such requests, like those of other requesters, will be analyzed to identify the particular person who will actually use the requested information in a scholarly or other analytic work and then disseminate it to the general public.

(p) "Non-commercial scientific institution" refers to an institution in the United States that is not operated on a "commercial" basis as that term is referenced in paragraph (n) of this section and which is operated solely for the purpose of conducting natural life or physical sciences research the results of which are not intended to promote any particular product or industry.

(q) "Representatives of the news media" refers to any person actively gathering news for a United States entity that is organized and operated to publish or broadcast news in the United States to the general public. The term "news" means information that is about current events or that would be of current interest to the general public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of printed periodicals (but only in those instances when they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public and whose products are, in fact, received by a significant element of the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication record may also be relevant evidence of the requester's status.

§ 1900.5 Organization; requests and submittals.

The headquarters of the Central Intelligence Agency is located in Fairfax County, VA. Functions are channeled and determined by regular chain-of-command procedures. Except as provided by this regulation, there are no formal or informal procedural requirements regarding public access to Agency records. Requests and other submittals should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Requesting Records

§ 1900.11 Freedom of Information Act and Executive Order 12356 communications; requirements as to form.

(a) Any communication to the CIA or to the Director of Central Intelligence under the Freedom of Information Act or Executive Order 12356 should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505. This address should appear on the envelope or other folder or package in which the communication is transmitted. It should also be included as the addressee of the letter or other communication or be clearly set forth in the text of the communication.

(b) Any request for records under the Freedom of Information Act (§ 1900.35), expression of interest in requesting records (§ 1900.35) or request for declassification of records under Executive Order 12356 (§ 1900.35) shall be in writing and shall be addressed as prescribed by § 1900.11(a). The Coordinator may, but need not, waive the requirements as to address.

(c) The request or expression of interest shall reasonably describe the records of interest and, in the case of mandatory declassification review, requests shall identify the documents(s) with specificity such as by National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number.

(d) Any request or communications to an agency other than the Central Intelligence Agency which concern documents, records or information originated by the CIA and referred to the CIA, shall be considered a Freedom of Information request to the CIA for that referred document as of date of receipt by the CIA of the referral, and shall be processed pursuant to regulations.

§ 1900.21 Identification of persons requesting information under the provisions of Executive Order 12356.

Pursuant to section 3.4(a)(1) of Executive Order 12356, a mandatory declassification review request can be made only by a United States citizen or permanent resident alien, a federal agency or a State or local government. This Agency shall require sufficient identifying information from the requester to authenticate the requester's qualifications.

§ 1900.23 Pre-request option: Estimates of charges.

(a) In order to avoid being faced with unanticipated sizeable charges, interested persons and entities may defer the submission of requests for records and first submit a written request, in accordance with the procedures prescribed by § 1900.11 for an estimate of charges likely to be incurred if the records are requested.

(b) Notice is hereby given that a requester may be liable for the payment of search charges, in accordance with the fee schedule and provisions of § 1900.25, even if search for requested records locates no such records and even if some or all of requested records which are located are denied the requester under one or more exemptions of the Freedom of Information Act or Executive Order 12356.

§ 1900.25 Fees for records services.

(a) Search, review, and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commerical interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so,

(2) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States government operations or activities; and, if so,

(3) Whether the disclosure of the requested documents will contribute to public understanding of United States government operations or activities; and, if so,

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(4) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States government operations and activities; and,

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) Whether the disclosure is primarily in the commercial interest of the requester.

(b) The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. In addition, fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than $6.00.

(c) Denials of requests for fee waivers or reductions may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator. Requests for fee waivers or reductions or appeals of such decisions will not be considered after a requester has given his commitment to pay fees and/or processing costs have been incurred by the CIA.

(d) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than $25.00 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure and guarantee payment thereof. The request shall be cancelled after 60 days if no response is received.

(e) In those cases where the Coordinator estimates that the fees will exceed $250.00 and the requester has no history of payment, an advance deposit of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(f) Except for requests that are for a commercial use, the Agency will not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information he actually seeks, for the purpose of avoiding or reducing applicable fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(g) The schedule of fees for services performed in responding to requests for CIA records is established as follows:

(1) For each one quarter hour, or fraction therof, spent by non-professional personnel in searching for a record, $2.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $4.50;

(3) For each one quarter hour, or fraction thereof, spent by professional personnel in reviewing a record in response to a FOIA request, which is primarily commercial, $4.50;

(4) For each on-line computer search, $11.00;

(5) For each off-line (batch) computer search of Central Reference Files, $27.00;

(6) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(7) For copies of paper documents in sizes not larger than 8½ x 14, $0.10 per copy of each page;

(8) For duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(9) For copies of reports, maps, reference aids, and other Agency publications, actual costs.

(h) Inasmuch as the Agency's systems of records are decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraphs (g)(4) through (6) of this section, do not include whatever manual search time is needed to determine whether the records located are in fact responsive to the request.

(i) Search fees are assessable even when no records pertinent to the requests, of no releasable records are found, provided the requester has been advised of this fact and he has, notwithstanding, agreed to incur the costs of search. Individuals associated with or otherwise making requests on behalf of any organization or other entity or person shall be jointly and severally liable with such party for all applicable search, review, and reproduction costs incurred.

(j) For requests which have accrued search and duplication fees in excess of $250.00, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time the records are provided. Payment shall be remitted by check or money order, made payable in U.S. dollars to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals shall be accepted or any additional records services provided to the requester or associated requester until the requester and associated requesters have paid all outstanding charges for services rendered under this CFR part or corresponding CFR part for other government agencies or departments. In cases of requesters associated with, acting in concert with, or on behalf of any other individual or organization, such requesters, individuals and organizations shall be jointly and severally liable for all applicable charges.

(k) With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of

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collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination.

(1) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½x11" or "11x14." Thus, requesters would not be entitled to 100 microfiche or 100 computer diskettes, for example, but rather such microfiche, diskettes, or other computer output having a dollar value equivalent to 100 pages of paper copies (i.e., $10.00).

(2) Similarly, the term "search time" in this context has, as its basis, manual search. To apply this term to searches made by computer, the Agency will provide computer searches under § 1900.25(c)(4) through (6) having a dollar value equivalent to two (2) hours of professional search time (i.e., $36.00).

(l) There are four categories of FOIA requesters: "commercial use" requesters; "educational and non-commercial scientific institution" requesters; "representatives of the news media" requesters; and, "all other" requesters. The FOIRA prescribes specific levels of fees for each of these categories:

(1) *"Commercial Use" Requesters:* When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *"Educational and Non-commercial Scientific Institution" Requesters:* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *"Representatives of the News Media" Requesters:* The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(q), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of a requester shall not be considered to be a request that is for commercial use provided that the requester meets the requirements specified in § 1900.3(q). Requesters must reasonably describe the records sought.

(4) *"All Other" Requesters:* FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the Privacy Act of 1974 which permit access to records without charge.

Processing Freedom of Information and Executive Order Communications

§ 1900.31 Screening communications.

(a) If any Agency employee receives a written communication which the employee believes to be an apparent or intended communication under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12356, he shall expeditiously transmit the communication to the Coordinator.

(b) Upon receipt of a communication in accordance with § 1900.11 or paragraph (a) of this section, the Coordinator shall promptly consult with such Agency components as he may deem appropriate and:

(1) Determine the nature of the communication—an expression of interest (§ 1900.33), a request (§ 1900.35) or other, and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determines that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determines that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (c)(2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act or Executive Order 12356. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent. In this and any cases where additional information is required, the request will be canceled after 60 days if no reply is received.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of acceptance. The search conducted pursuant to that request shall be for records in existance as of and through the acceptance date. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a

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request, as provided by subsection (a)(6)(A)(i) of the Freedom of Information Act, shall begin as of the acceptance date.

(e) The Coordinator shall promptly process under the procedures specified by § 1900.33 those communications which he determines to be expressions of interest. He shall promptly process under the procedures specified by § 1900.35 those communications which he determines to be requests.

§ 1900.33 Processing expressions of interest.

(a) Upon determining, in accordance with § 1900.31(c)(3), that a communication is an expression of interest, and after promptly consulting with such Agency components as he may deem appropriate, the Coordinator, to the extent feasible, shall determine the applicable search, review (if applicable), and, duplication charges likely to be incurred in processing the potential request. In determining such charges, the Coordinator shall take into account the nature and quantity of the work and services of people and computers and other equipment which may be required, and the applicable rates set out in the fee schedule prescribed by § 1900.25(g). If feasible at this stage, the Coordinator also shall determine whether to waive or reduce the fee in accordance with § 1900.25(a).

(b) The Coordinator thereupon shall advise the potential requester, in writing, of the likely charges and he shall make clear that the amounts indicated are estimates only, if such be the case, and, if there is a possibility that the charges to be incurred may be greater than the estimate, he shall so inform the potential requester. If the amounts indicated are not estimates but are the amounts which in fact are to be charged if the potential requester makes a request, he shall inform the potential requester of that fact. In either event, he shall also inform the potential requester that search charges will be levied upon the requester even if no records fitting the description are located or if any or all records which do fit the description are denied the requester.

(c) When he deems it appropriate or when the potential requester so requests, the Coordinator may assist the requester in determining whether and, if so, how to revise the description of the records of interest so as to cause or permit a reduction in the likely applicable charges.

(d) Upon receipt of such estimate and advice concerning likely charges, the potential requester may:

(1) In accordance with § 1900.11, submit a request for records, either the records of interest indicated in his expression of interest or records encompassed in a modified description;

(2) Advise the Coordinator that he does not intend to request records; or

(3) Take no additional action.

(e) If, as a result of his consultations with the Coordinator or otherwise, the potential requester wants to request records additional to or other than those described in his expression of interest, he may submit an expression of interest with respect to such records, in accordance with § 1900.33 or a request for such records in accordance with § 1900.35.

§ 1900.35 Processing requests for records.

(a) Upon determining that a communication is a request for records, the Coordinator, after consulting with such Agency components as he may deem appropriate, shall promptly transmit a copy of the request to the component or components believed to be a logical repositor of responsive records, inform the components of the date of receipt of the request as determined by him pursuant to § 1900.31(d), and alert the components to the action required of them by §§ 1900.41 through 1900.47 with respect to the request. Requests will be handled with each component on a first-received, first-answered basis. In those components where the volume of pending, highly-complex ("project") requests has substantially impeded the processing of other smaller requests, the Coordinator may direct the establishment of a dual-queue system in order to ensure that both regular and project requests receive appropriate and equitable processing.

(b) Notwithstanding paragraph (a) of this section, the Coordinator may determine that there is no basis for searching for the requested records or that the Agency's required response to the request obviates the need to conduct any search since

(a) The fact of the existence or non-existence of records responsive to the request would itself be classified pursuant to Executive Order 12356, or,

(2) The category of the information requested is within the scope of 50 U.S.C. 403(d)(3), 50 U.S.C. 403g, or other applicable exempting statute and thus the requested information, if it existed, would be exempt from required disclosure pursuant to FOIA exemption (b)(3).

Whenever the Coordinator makes such a determination he shall respond to the requester accordingly, and the requirements of paragraph (a) of this section and of §§ 1900.41 through 1900.43 shall not apply as to that particular request.

Actions on Requests

§ 1900.41 Searching for requested records.

(a) Upon receipt of a copy of a request and the tasking pursuant to § 1900.35, the components which are logical repositories of the requested records (hereinafter the "cognizant components"), shall, with such assistance as may be appropriate from the Coordinator and from such reference, indexing of filing aids as available, undertake to locate the requested records from all files except those designated by the Director of Central Intelligence as exempt from search pursuant to the CIA Information Act, 50 U.S.C. 431 through 432.

(b) If no records described by the requests are located, the cognizant components shall inform the Coordinator who shall promptly inform the requester in writing. The Coordinator also shall determine the charges, if any, for which the requester shall be liable, in accordance with the fee schedule and provisions of § 1900.25. He shall inform the requester of the amount charged, explain the basis of computation, and request prompt payment thereof.

§1900.43 Reviewing records.

(a) The cognizant components shall review any located records in accordance with the provisions of the Freedom of Information Act and Executive Order 12356 and on the basis of other applicable law, regulations and policy, and determine which, if any, requested records, or reasonably segregable portions of records, are to be furnished the requester and which are to be denied or withheld. Any decision to furnish or to deny or withhold requested records shall be made only by employees and officials to whom authority to make such decisions has been duly delegated.

(b) In the event an Agency component believes that located records require review by another CIA component or another agency, it shall forward such records to the Coordinator who shall expeditiously coordinate such review.

(c) In the event located records are determined to have originated with another government agency, the Coordinator shall expeditiously forward such records or a description thereof to the originating agency for their determination.

(d) Pursuant to subsection 3.4(f)(1) of Executive Order 12356, this Agency shall refuse to confirm or deny the existence

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or non-existence of information requested whenever the fact of its existence or non-existence is itself classifiable under this Order.

§ 1900.45 Expeditious action; extension of time.

(a) Concerning Freedom of Information Act requests, whenever feasible under the standards prescribed by § 1900.47, the search and review functions prescribed by §§ 1900.41 and 1900.43 and notice to the requester of the Agency action on the request, as prescribed by § 1900.49(a), shall be completed within ten days of the date of Agency receipt of the request as determined by the Coordinator pursuant to § 1900.31(d). Whenever the Coordinator determines that "unusual circumstances" as defined by subsection (a)(6)(B) of the Freedom of Information Act exist, he may, by written notice to the requester, authorize an additional period for completion of Agency action, but no such extension shall be for more than ten work days. His notice shall also set forth the reasons for the extension.

(b) Concerning mandatory declassification review requests, Agency responses shall be governed by the amount of search and review time required to process the request under §§ 1900.41 and 1900.43. If unusual circumstances prevent a final Agency determination from being reached within one year of the date of receipt, the Agency shall inform the requester of the additional time needed to process the request.

§ 1900.47 Allocation of manpower and resources; agreed extension of time.

(a) Agency components shall devote such manpower and other resources to searching for, locating and reviewing records in accordance with §§ 1900.41 and 1900.43 as may be appropriate and expedient in the circumstances, taking into account:

(1) The manpower and resources available for those purposes;

(2) The right of a requester submitting a request under the Freedom of Information Act to resort to litigation if the Agency decision on the request is not made within ten work days; and

(3) All functions, duties and responsibilities assigned to those components by, or pursuant to, a law.

(b) The responsible components shall consult with the Coordinator with regard to the need to allocate resources and establish priorities, and the latter with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's efforts and ability to act on his request expeditiously. In particular, when the Coordinator deems it feasible and of possible benefit to the requester, the public, or the Agency, he shall inform the requester that more thorough or extensive search or review, or both, could be accomplished, which might be of benefit to the requester, if additional time were to be available. When appropriate in such cases, the Coordinator shall also advise the requester of the effect on charges and fees such additional search might cause. Any extensions arranged or agreed to under this section may be in addition to any extensions under § 1900.45.

§ 1900.49 Notification and payment; furnishing records.

(a) The Coordinator shall promptly inform the requester, in writing, which of the requested records, or portions thereof, if any, are to be furnished the requester and those, if any, which are denied, as determined pursuant to § 1900.43(a). With respect to the latter, he shall also explain the reasons for the denial and he shall furnish the names and titles or positions of the persons responsible for the decision to deny access.

(b) Upon receipt of payment of all fees and charges, or upon the completion of arrangements satisfactory to the Coordinator that payment will be made promptly, the Coordinator shall promptly prepare copies of the records, or portions of records, which are to be made available and transmit them to the requester. The Coordinator shall do likewise with respect to any records or portions of records made available to a requester by the action of the Central Intelligence Agency Information Review Committee under § 1900.51(e).

(c) As an alternative to any requester receiving any records from the Agency by mail, a requester may arrange to inspect the records at a CIA Reading Room in the metropolitan Washington, DC area. The Coordinator will designate a Reading Room for the purpose of records inspection, and the requester may select whatever records the requester wishes to purchase at a cost set forth in § 1900.25. Access to the Reading Room will be granted only after the fees that accumulated from the search (and review if applicable) to produce the requested records have been paid, or waived by the Coordinator pursuant to § 1900.25(a). Upon receipt of a written statement from the requester exercising this option, the Coordinator will advise the requester of the location of the Reading Room and provide directions thereto. Records that the Agency will release will be available for inspection in the Reading Room on a date or dates mutually agreed upon by the Coordinator and the requester, not more than seven days from the Agency's receipt of the written request or from completion of the processing of the request for records, whichever is later. The requester may agree to a date or dates more than seven days from such time. On the days the Reading Room is open, it will be available to requesters from 9:30 a.m. to 3:30 p.m.

Appeals

§ 1900.51 Appeals to CIA Information Review Committee.

(a) *Establishment of Committee.* The CIA Information Review Committee is hereby established pursuant to the Freedom of Information Act and section 3.4(d) of Executive Order 12356. The Committee shall be composed of the Deputy Director for Administration, the Deputy Director for Operations, the Deputy Director for Science and Technology, the Deputy Director for Intelligence, and the Inspector General. The Director of Central Intelligence shall appoint a Chairman. The Committee, by majority vote, may delegate to one or more of its members the authority to act on any appeal or appeals under this section, and may authorize the Chairman to delegate such authority. The Chairman may appoint an Executive Secretary and delegate such authorities as he deems appropriate; in the absence of such an appointment, he shall exercise any delegated or assigned functions himself. The Chairman may call upon appropriate components to participate when special equities or expertise are involved.

(b) *Right of appeal; Notice.* Whenever access to any requested record or any portion thereof is denied, the requester shall be apprised, in writing, of his or her right to appeal the denial to the CIA Information Review Committee through the Coordinator.

(c) *Appeal procedures.* Any such appeal or request to the Committee shall be in writing, addressed to the Coordinator. The appeal or request may present such information, data, and argument in support thereof as the requester may desire. The Committee shall not permit a requester or his representative to appear before the Committee or to make an oral presentation. No appeal shall be accepted if the requester or associated requester has outstanding record service charges with the CIA or other federal government agency or department.

(d) *Time for appeal; expiration of appeal.* An appeal under the Freedom of Information Act shall be exercised

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within thirty days of the date of receipt of notification of the right to appeal and the right of appeal shall cease as of the expiration of that period. But the Committee, for good cause shown, may permit an additional thirty days for the submission of an appeal. Pursuant to the mandatory declassification review provisions of Executive Order 12356, an administrative appeal must be filed within sixty days of receipt of the denial of the initial request.

(e) *Committee action on appeals and requests.* (1) The Committee shall promptly consider any appeal, together with any submissions in support thereof, and shall grant or deny the appeal or take such other action thereon as it may deem appropriate. The Committee's review, decision and action shall be based on and shall be in conformance with the Freedom of Information Act, Executive Order 12356 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests under Executive Order 12356 for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions or coherent segments of such records as it deems appropriate in accordance with Executive Order 12356.

(3) Committee action on appeals of FOIA determinations shall be completed within twenty work days of receipt of the appeal, and appeal of mandatory declassification review determinations shall be completed within thirty (30) workdays, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under this Part. In the event that the Committee is unable to complete its review of an appeal within the time prescribed by this subsection, it shall so advise the requester.

(4) Concerning appeals under the FOIA, the Committee shall promptly inform the requester of its determination(s) and, with respect to any decision to withhold or deny records, it shall identify the officer responsible therefore. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

(5) Concerning appeals under the mandatory declassification review provisions of Executive Order 12356, Committee decisions are final and no right of judicial review exists.

Miscellaneous

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive Order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or Executive Order 12356.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such requests and only upon the prior written approval by the CIA Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with applicable executive orders, regulations, and directives, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort.

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive Order 12356, and signs an agreement to safeguard the classified material to which access is granted in accordance with Agency security requirements; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project as the Coordinator may determine, but in no event for more than two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) of this section and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the CIA administration of Executive Order 12356 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

Date: December 2, 1987.

William F. Donnelly,

Deputy Director for Administration.

[FR Doc. 87-28115 Filed 12-7-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3295-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves, as a revision to the Ohio State Implementation Plan (SIP) for total suspended particulates (TSP), operating permits for the following two shiploading facilities: The Andersons Grain Division, Toledo Plant and Mid-States Terminals Incorporated. These permits are needed to satisfy the requirements of Part D of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on January 7, 1987.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Delores Sieja, at (312) 886-6038, before visiting the Region V Office.)

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CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

§ 1900.25 Fees for records services.

(a) Search, review, and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commerical interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so,

(2) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States government operations or activities; and, if so,

(3) Whether the disclosure of the requested documents will contribute to public understanding of United States government operations or activities; and, if so,

(4) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States government operations and activities; and,

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) Whether the disclosure is primarily in the commercial interest of the requester.

(b) The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. In addition, fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than $6.00.

(c) Denials of requests for fee waivers or reductions may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator. Requests for fee waivers or reductions or appeals of such decisions will not be considered after a requester has given his commitment to pay fees and/or processing costs have been incurred by the CIA.

(d) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than $25.00 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure and guarantee payment thereof. The request shall be cancelled after 60 days if no response is received.

(e) In those cases where the Coordinator estimates that the fees will exceed $250.00 and the requester has no history of payment, an advance deposit of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(f) Except for requests that are for a commercial use, the Agency will not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information he actually seeks, for the purpose of avoiding or reducing applicable fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(g) The schedule of fees for services performed in responding to requests for CIA records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by non-professional personnel in searching for a record, $2.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, $4.50;

(3) For each one quarter hour, or fraction thereof, spent by professional personnel in reviewing a record in response to a FOIA request, which is primarily commercial, $4.50;

(4) For each on-line computer search, $11.00;

(5) For each off-line (batch) computer search of Central Reference Files, $27.00.

(6) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(7) For copies of paper documents in sizes not larger than 8½ x 14, $0.10 per copy of each page;

(8) For duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost, and

Tab C

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interest (§ 1900.33), a request (§ 1900.35) or other, and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determines that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determines that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (c)(2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act or Executive Order 12356. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent. In this and any cases where additional information is required, the request will be canceled after 60 days if no reply is received.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of acceptance. The search conducted pursuant to that request shall be for records in existance as of and through the acceptance date. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a

collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination.

(1) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½x11" or "11x14." Thus, requesters would not be entitled to 100 microfiche or 100 computer diskettes, for example, but rather such microfiche, diskettes, or other computer output having a dollar value equivalent to 100 pages of paper copies (i.e., $10.00).

(2) Similarly, the term "search time" in this context has, as its basis, manual search. To apply this term to searches made by computer, the Agency will provide computer searches under § 1900.25(c)(4) through (6) having a dollar value equivalent to two (2) hours of professional search time (i.e., $36.00).

(l) There are four categories of FOIA requesters: "commercial use" requesters; "educational and non-commercial scientific institution" requesters; "representatives of the news media" requesters; and, "all other" requesters. The FOIRA prescribes specific levels of fees for each of these categories:

(1) *"Commercial Use" Requesters:* When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *"Educational and Non-commercial Scientific Institution" Requesters:* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *"Representatives of the News Media" Requesters:* The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(q), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of a requester shall not be considered to be a request that is for commercial use provided that the requester meets the requirements specified in § 1900.3(q). Requesters must reasonably describe the records sought.

(4) *"All Other" Requesters:* FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the Privacy Act of 1974 which permit access to records without charge.

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